IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 73 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUSHILABEN PRATAPSINH PARMAR & 4 - Applicant(s)
Versus
NARVARSINGH ANDARSINH RATHOD & 1 - Respondent(s)

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Appearance :
MR SV RAJU for Applicant(s) : 1 - 5.
NOTICE SERVED for Respondent(s) : 1,
MR ADIL MEHTA for Respondent(s) : 1,
Mr S.S. Patel, Addl.PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 08/11/2006

ORAL JUDGMENT

1. Invoking Articles 226 and 227 of the Constitution and the provisions of section 482 of the Code of Criminal Procedure, 1973, the petitioners have approached this Court for quashing the

proceedings of Criminal Case No. 962 of 1984 which are initiated by the complaint made by respondent no.1 who was a Police Sub-Inspector. Admittedly, the persons joined in the complaint as accused persons are his relatives and their neighbours. Although the complaint mentioned offences punishable under sections 454, 380 and 511 read with section 114 of IPC, all that was alleged in the complaint was that the accused persons had attempted to open the lock applied on the premises of the complainant. The petitioners have made several averments of facts in the petition which are not denied by the respondent. It was submitted by the petitioner that not only that 23 years have passed after the complaint but the relations among the parties were only likely to worsen because of the pointless prosecution of a frivolous complaint.

2. It has been averred by the petitioners, and not controverted by the respondent, that the petitioners have been falsely implicated in the complaint filed by the respondent in retaliation to the notice sent by the petitioner to him as well as

the complaint lodged against him before the Police Commissioner of Surat. It is also stated in the petition that the respondent being a Police Sub-Inspector, he was in a position to influence the officials in the police department and that he was instrumental in seeing to it that the investigation in respect of the complaint filed against the petitioners was handed over to one Police Sub-Inspector who was the neighbour and fast friend of the respondent.

3. In view of the allegations made in the complaint and the uncontroverted averments made in the petition, it clearly appears that the complaint in question and the proceedings therein would be an abuse of process of the Court. Therefore, the petition is allowed and the proceedings of criminal case no.962 of 1984 pending in the Court of Chief Judicial Magistrate, Surat are quashed. Rule is made absolute with no order as to costs.

[D. H. Waghela, J.]

msp